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Haubert
C.P.

DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D. C. 20548**

FILE: B-153307

DATE: February 15, 1978

**MATTER OF: Elder L. Gurley - Retroactive Overtime
Compensation**

- DIGEST:**
1. Employee claimed overtime compensation for changing into and out of uniform at his residence. Claim may not be paid because changing of uniforms is not required to be performed at duty station, and therefore is not compensable duty.
 2. Civilian guards claimed overtime for pre-shift and post-shift activity. Where it is determined that it takes GSA guards 3 minutes to obtain weapon and proceed to roll call location, while such time is considered to be work, it is not compensable as overtime as it is so nominal that it must be considered within the de minimus rule.

This matter concerns an appeal by Mr. Elder L. Gurley from a settlement by our Claims Division which denied his claim for retroactive overtime compensation.

The record indicates that Mr. Gurley was employed by the United States Navy as a civilian security guard at the White Oak Laboratory, Naval Surface Weapons Center, Silver Spring, Maryland. On October 30, 1975, our Claims Division received a claim by Mr. Gurley and four others for overtime compensation. Mr. Gurley requested payment pursuant to the decision of the Court of Claims in Baylor v. United States, 198 Ct. Cl. 331 (1972), for an additional 30 minutes per day for changing into and out of uniform at his residence, and 5 minutes per day for drawing his weapon and ammunition and walking to the required place for muster and roll call. The administrative report indicated that the claimants were not required to change into and out of uniform after reporting to a designated locker area. The report concluded that since the employees in fact changed clothes at their residences, they were not entitled to compensation for that activity. With regard to the claim for

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time spent drawing weapons, the administrative report states:

"It is uncontested that the claimants have been required to draw their weapons and ammunition from a control point prior to beginning of work shift. * * * The total time spent in obtaining a weapon and proceeding to the muster/roll call location cannot be reasonably estimated at more than three (3) minutes; as opposed to the five (5) minutes estimated by claimants."

Accordingly, that report states that this claim should be dismissed as representing a de minimis amount of time.

In appealing the settlement, Mr. Gurley, has submitted a statement indicating that he in fact worked an additional 31 minutes and 6 seconds per day. Mr. Gurley derived that figure by measuring the time consumed in drawing his weapon, ammunition, radio, etc., in Building 1 and walking from there to Gate 22 for muster at the start of his workshift. Multiplying that time by two, he arrived at his claimed amount. In a letter dated April 25, 1977, the Commanding Officer of the Navy Regional Finance Center reiterated their contention that the total elapsed time could not have exceeded 3 minutes. We understand that Mr. Gurley's case is similar to other claims presented by employees of the Navy at the White Oak Laboratory.

Mr. Gurley's claim for overtime while changing into and out of uniform at his residence is clearly without merit. As noted by the Court of Claims in the Baylor decision, on February 28, 1966, the General Services Administration amended its regulations to permit employees to wear their uniforms to work. Baylor at 393. Since the basis in Baylor for payment of overtime for changing uniforms was the former requirement that guards change uniforms only at work, the court did not entertain claims for changing into or out of uniform after the regulation was amended. In the present case, there is no indication that the Navy ever required the employees to change uniforms at the place of duty. Indeed, the claimant requests payment for changing

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into and out of uniform at his residence. Since such activity is not required to be performed at the employee's place of work, it is not compensable duty under Baylor. Accordingly, Mr. Gurley's claim in that regard is denied.

Concerning Mr. Gurley's claim for pre-shift and post-shift activity no question of law has been presented for our consideration. The essential controversy in this case is whether such activity consumed over 30 minutes, as claimed by Mr. Gurley, or about 3 minutes, as contended by the agency. Pursuant to 4 C.F.R. § 31.7, this Office does not hold adversary hearings in order to adjudicate claims, but decides them on the basis of the written record presented by the parties. Joan J. Shapira, B-188023, July 1, 1977. Therefore, if the written record before us presents a material dispute of fact that cannot be resolved without an adversary hearing, we are required to deny the claim because the claimant has failed to establish his claim. Samuel V. Britt, B-186763, March 28, 1977. Therefore, we must consider the time spent in picking up the equipment and reporting for roll call as 3 minutes. Further, there is clearly a discrepancy in the claimant's own version of the facts since he initially claimed 5 minutes per day for drawing his weapon, but presently claims over 30 minutes daily to perform that function.

Accordingly, the claim for the periods of time relating to roll call is also denied.

R. J. K. 11a
Deputy Comptroller General
of the United States